

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

2006 AUG 17 P 12:36

SANDI PHILLIPS and RONALD J. PHILLIPS,

Plaintiffs,

vs.

ST. PAUL TRAVELERS INSURANCE COMPANY,

Defendant.

WILLIAM D. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO. 3:06cv744

**NOTICE OF REMOVAL**

**COMES NOW** Defendant Travelers Commercial Insurance, incorrectly identified in Plaintiffs' Complaint as "St. Paul Travelers Insurance Company," ("Travelers") and files this Notice of Removal, hereby removing the case captioned Sandi Phillips and Ronald J. Phillips v. St. Paul Travelers Insurance Company (CV-06-238) from the Circuit Court of Russell County, Alabama to the United States District Court for the Middle District of Alabama, Eastern Division. As grounds for this removal, Defendant Travelers states as follows:

I.

The above-entitled action was commenced in the Circuit Court of Russell County, State of Alabama, and is now pending therein. A copy of the Plaintiff's complaint, along with all process, pleadings, and orders served on or by Defendant Travelers, is attached hereto as Exhibit "A."

II.

The Court file does not reflect the date that Defendant Travelers was served with the Plaintiff's Complaint; however, the Summons for Travelers was not issued until July 18, 2006.

Thus, the earliest that Travelers could have been served with the Summons and Complaint is July 18, 2006. Therefore, the removal of this case to this Court is timely pursuant to 28 U.S.C. Section 1446(a).

III.

This action is one of a civil nature over which the District Court of the United States has original jurisdiction because of the diversity of citizenship, pursuant to 28 U.S.C. Section 1332.

IV.

Upon information and belief, Plaintiff Sandi Phillips at the time of this action, and since that time, is a citizen and resident of the State of Alabama and is over the age of nineteen (19). See Exhibit "B."

V.

Upon information and belief, Plaintiff Ronald J. Phillips at the time of this action, and since that time, is a citizen and resident of the State of Alabama and is over the age of nineteen (19). See Exhibit "B."

VI.

Defendant Travelers, at the time of the commencement of this action, and since that time, was and is now a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the state of Connecticut, and was not at the time of the commencement of this action, nor at any time, a citizen or resident of the State of Alabama.

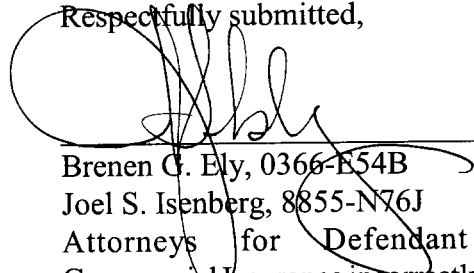
VIII.

The matter in dispute in the Plaintiffs' Complaint exceeds the sum of Seventy-Five Thousand and no/100 Dollars (\$75,000.00), exclusive of interest and costs. In their Complaint, the Plaintiffs

specifically state that they are seeking "the sum of \$100,000.00, plus interest at 6% . . . and all cost of court." See Exhibit A, Plaintiffs' Complaint.

WHEREFORE PREMISES CONSIDERED, Defendant Travelers prays that this Honorable Court take jurisdiction of this cause and issue all necessary orders and process in order to remove the above-referred action from the Circuit Court of Russell County, Alabama to this Court.

Respectfully submitted,



Brenen G. Ely, 0366-E54B  
Joel S. Isenberg, 8855-N76J  
Attorneys for Defendant Travelers  
Commercial Insurance incorrectly identified in  
Plaintiffs' Complaint as "St. Paul Travelers  
Insurance Company"

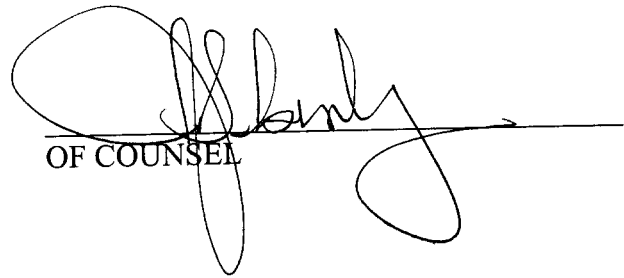
OF COUNSEL:  
SMITH & ELY, LLP  
2000A SouthBridge Parkway  
Suite 405  
Birmingham, Alabama 35209  
Phone: (205) 802-2214  
Fax: (205) 879-4445

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and accurate copy of the foregoing has been served on all parties of record by:

<u>          </u>	Hand Delivery
<u>  X  </u>	U. S. Mail
<u>          </u>	Overnight Delivery
<u>          </u>	Facsimile
<u>          </u>	E-File

on this the 17th day of August, 2006.

  
OF COUNSEL

cc:  
James R. McKoon, Jr.  
McKoon & Thomas  
Post Office Box 3220  
Phenix City, Alabama 36868-3220

# **Exhibit "A"**

Russell County, Alabama

04/21/2005

# COVER SHEET

## CIRCUIT COURT - CIVIL CASE

(Not For Domestic Relations Cases)

Case Number

C V 2 0 0 6 2 3 8

Date of Filing:

Judge Code:

0 7 1 4 2 0 0 6 J O H O 7 2

Month

Day

Year

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF RUSSELL, ALABAMA  
(Name of County)

SANDI PHILLIPS, ET AL.

Plaintiff

v.

ST. PAUL TRAVELERS INSURANCE COMPANY

Defendant

First Plaintiff ☐ Business ☒ Individual  
☐ Government ☐ Other

First Defendant ☒ Business ☐ Individual  
☐ Government ☐ Other

**NATURE OF SUIT:** Select primary cause of action, by checking box (check only one) that best characterizes your action:

## TORTS: PERSONAL INJURY

- ☐ WDEA Wrongful Death  
☐ TONG Negligence: General  
☐ TOMV Negligence: Motor Vehicle  
☐ TOWA Wantonness  
☐ TOPL Product Liability/AEMLD  
☐ TOMM Malpractice-Medical  
☐ TOLM Malpractice-Legal  
☐ TOOM Malpractice-Other  
☐ TBFM Fraud/Bad Faith/Misrepresentation  
☐ TOXX Other: \_\_\_\_\_

## TORTS: PROPERTY INJURY

- ☐ TOPE Personal Property  
☐ TORE Real Property

## OTHER CIVIL FILINGS

- ☐ ABAN Abandoned Automobile  
☐ ACCT Account & Non-Mortgage  
☐ APAA Administrative Agency Appeal  
☐ ADPA Administrative Procedure Act  
☐ ANPS Adults in Need of Protective Services

## OTHER CIVIL FILINGS (cont'd)

- ☐ MSXX Birth/Death Certificate Modification/Bond  
 Forfeiture Appeal/Enforcement of Agency  
 Subpoena/Petition to Preserve  
☐ CVRT Civil Rights  
☐ CONO Condemnation/Eminent Domain/Right-of-Way  
☐ CTMP Contempt of Court  
☒ CONT Contract/Ejectment/Writ of Seizure  
☐ TOCN Conversion  
☐ EQND Equity Non-Damages Actions/Declaratory Judgment/  
 Injunction/Election Contest/Quiet Title/Sale for  
 Division  
☐ CVUD Eviction Appeal/Unlawful Detainer  
☐ FORJ Foreign Judgment  
☐ FORF Fruits of Crime Forfeiture  
☐ MSHC Habeas Corpus/Extraordinary Writ/Mandamus/  
 Prohibition  
☐ PFAB Protection from Abuse  
☐ FELA Railroad/Seaman (FELA)  
☐ RPRO Real Property  
☐ WTEG Will/Trust/Estate/Guardianship/Conservatorship  
☐ COMP Workers' Compensation  
☐ CVXX Miscellaneous Circuit Civil Case

**ORIGIN (check one):** F ☒ INITIAL FILING  
 A ☐ APPEAL FROM  
 DISTRICT COURT

R ☐ REMANDED  
 T ☐ TRANSFERRED FROM  
 OTHER CIRCUIT COURT

OTHER: \_\_\_\_\_

HAS JURY TRIAL BEEN DEMANDED? ☐ YES ☒ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P. for procedure)

RELIEF REQUESTED: ☒ \$ \_\_\_\_\_ MONETARY AWARD REQUESTED

☐ NO MONETARY AWARD REQUESTED

ATTORNEY CODE(S):

M C K 0 2 0

EMAIL ADDRESS(ES):

jrmckoon@aol.com

SIGNATURE(S):

MEDIATION REQUESTED: ☐ YES ☐ NO ☒ UNDECIDED

DATE: 7/14/06

AVSO300

ALABAMA JUDICIAL DATA CENTER  
RUSSELL COUNTY

## SUMMONS

CV 2006 000238.00  
ALBERT L. JOHNSON

IN THE CIRCUIT COURT OF RUSSELL COUNTY

SANDI PHILLIPS ET AL VS ST PAUL TRAVELERS INSURANCE COMPANY

SERVE ON: (D001)

## PLAINTIFF'S ATTORNEY

ST PAUL TRAVELERS INSURANCE CO  
SUITE 600  
3000 RIVERCHASE GALLERIA  
BIRMINGHAM, AL 35244-0000MCKOON JAMES R JR  
925 BROAD STREET  
POST OFFICE DRAWER 3220  
PHENIX CITY, AL 36868-3220

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

- ( ) TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF \_\_\_\_\_ PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 07/18/2006

CLERK: KATHY COULTER

BY: *AK*PO BOX 518  
PHENIX CITY AL 36868-0510  
(334)298-0516

## RETURN ON SERVICE:

- ( ) CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) \_\_\_\_\_  
(RETURN RECEIPT HERETO ATTACHED)

- ( ) I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO \_\_\_\_\_

IN \_\_\_\_\_ COUNTY, ALABAMA ON (DATE) \_\_\_\_\_

DATE \_\_\_\_\_

SERVER SIGNATURE \_\_\_\_\_

SERVER ADDRESS \_\_\_\_\_

TYPE OF PROCESS SERVER \_\_\_\_\_

OPERATOR: ANL  
PREPARED: 07/18/2006

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

SANDI PHILLIPS and RONALD J. )  
PHILLIPS, )

Plaintiffs, )

vs. )

CASE NO. CV-06- 238

ST. PAUL TRAVELERS )  
INSURANCE COMPANY, )

Defendant. )

COMPLAINT

Come now the Plaintiffs in the above styled cause and complains unto  
the Court as follows:

Count I

1. On or about the 16<sup>th</sup> day of March, 2005, at or upon a public  
highway known as Auburn Road in Phenix City, Russell County, Alabama,  
Michael Harris, negligently and/or wantonly caused or allowed a motor  
vehicle to collide with a motor vehicle driven by the Plaintiff, Sandi Phillips.

2. As a proximate consequence of the said negligence and/or  
wantonness of Michael Harris, the Plaintiff, Sandi Phillips, was caused to  
suffer the following injuries and damages:

- a. Serious bodily injury and the subsequent effects thereof;
- b. Invasive and costly medical procedures and therapy;



- c. To incur medical expense;
- d. To seek the services of medical care professionals including, but not limited to, doctors and hospitals; and
- e. To endure physical pain, emotional upset and suffering.

3. Plaintiff, Ronald J. Phillips, was at all times material to this Complaint, the husband of Sandi Phillips. As approximate consequence of the negligence and/or wantonness of Michael Harris, Plaintiff, Ronald J. Phillips was caused to suffer the following injuries and damages:

- a. Temporary loss of consortium.

4. Plaintiffs allege that at the time of the wreck referenced herein, the said Michael Harris possessed insufficient liability insurance coverage to fully compensate the Plaintiffs for their damages.

5. Plaintiffs allege at the time of the wreck referenced herein, they were covered under the provisions of an insurance policy issued by St. Paul Travelers (successor company to Travelers) policy number 976974840 101

1. Said policy provided for under insured motorist coverage to compensate Plaintiffs for their damages in excess of the liability coverage provided by Michael Harris' liability insurance carrier, Alfa Insurance.

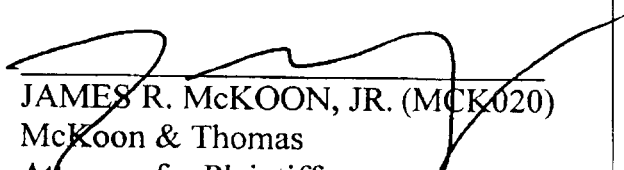
6. Plaintiffs have settled with Michael Harris for the limits of Michael Harris' liability insurance coverage with Alfa Insurance in the

amount of \$25,000.00. Prior to said settlement, Plaintiffs provided Defendant, St. Paul Travelers, with notice of Alfa's offer to settle with no response from the Defendant.

7. Due to the injuries and damages of Sandi Phillips and the loss of consortium suffered by Ronald J. Phillips, the Plaintiffs are entitled to the maximum amount of coverage for underinsured motorist available under the abovesaid policy of insurance.

8. Defendant, St. Paul Travelers Insurance Company, is and has been on notice of the injuries and damages of the Plaintiff, Sandi Phillips, as well as the damages of Ronald J. Phillips and has refused to offer or pay them the underinsured motorist benefits to which they are entitled under the abovesaid policy of insurance. Therefore, Defendant, St. Paul Travelers Insurance Company, is in breach of the provisions of the abovesaid policy and owes the Plaintiffs the maximum amounts of coverage due them under the abovesaid policies.

WHEREFORE, the above premises considered, Plaintiffs demand of the Defendant, St. Paul Travelers Insurance Company, the sum of \$100,000.00, plus interest at 6% from the date of the breach of the insurance contract and all cost of court.



JAMES R. McKOON, JR. (MCK020)  
McKoon & Thomas  
Attorney for Plaintiffs  
P. O. Box 3220  
Phenix City, AL 36868-3220  
(334) 297-2300

**PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AT:**

St. Paul Travelers Insurance Company  
3000 Riverchase Galleria  
Suite 600  
Birmingham, Alabama 35244

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

SANDI PHILLIPS and RONALD J. )  
PHILLIPS, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ST. PAUL TRAVELERS INSURANCE )  
COMPANY, )  
 )  
Defendant. )

**RECEIVED**

2006 AUG 17 P 2:22

CIVIL ACTION NO. CV-06-238

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

**REMOVAL NOTICE**

TO THE PLAINTIFFS IN THE ABOVE-STYLED CAUSE AND THEIR ATTORNEY OF  
RECORD:

Please take notice that on the 17th day of August, 2006, the undersigned, as attorneys for Defendant Travelers Commercial Insurance, incorrectly identified in Plaintiffs' Complaint as "St. Paul Travelers Insurance Company," ("Travelers") filed on its behalf a notice of removal in the United States District Court, for the Middle District of Alabama, Eastern Division, to remove the above-entitled cause of action from the Circuit Court of Russell County, Alabama (CV-06-238) to said United States District Court, and also filed a true copy of said Notice of Removal with the Clerk of the Circuit Court of Russell County, Alabama.



Brenen G. Ely, ELY004  
Joel S. Isenberg, ISE001  
Attorneys for Travelers Commercial Insurance  
incorrectly identified in Plaintiffs' Complaint  
as "St. Paul Travelers Insurance Company"

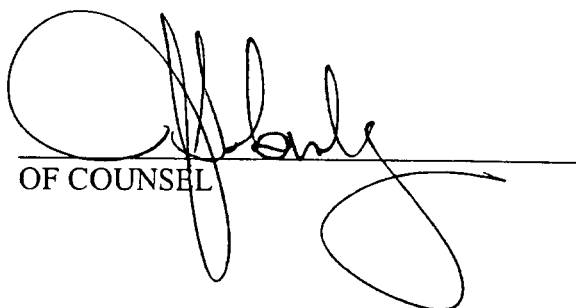
OF COUNSEL:  
SMITH & ELY, LLP  
2000A SouthBridge Parkway  
Suite 405  
Birmingham, Alabama 35209  
Phone: (205) 802-2214  
Fax: (205) 879-4445

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and accurate copy of the foregoing has been served on all parties of record by:

_____	Hand Delivery
<u>  X  </u>	U. S. Mail
_____	Overnight Delivery
_____	Facsimile
_____	E-File

on this the 17th day of August, 2006.

  
\_\_\_\_\_  
OF COUNSEL

cc:

James R. McKoon, Jr.  
McKoon & Thomas  
Post Office Box 3220  
Phenix City, Alabama 36868-3220

# **Exhibit "B"**



## AUTOMOBILE POLICY DECLARATIONS

### 1. Named Insured

RONALD J & SANDI PHILLIPS  
15 LEE ROAD 526  
PHENIX CITY AL 368708753

### Your Service Center Address

GLENS FALLS BUS. CTR. EXCHANGE  
P O BOX 6075  
GLENS FALLS, NY 128016075

Your Policy Number : 976974840 101 1  
Your Account Number: 976974840

For Policy Service Call 1-800-842-3675  
For Claim Service Call 1-800-CLAIM33

### 2. This is change number 1, which is effective September 10, 2004.

- \* This change causes no additional or return premium for the policy period.
- \* The policy period is from September 10, 2004 to September 10, 2005
- \* Mortgagee/additional insured has been added.
- \* These declarations replace all prior automobile policy declarations on the date on which this change is effective.

### 3. Your Vehicles

### Identification Numbers

1	1979 FORD F150	E14BHDP1505
2	2001 CHEVR BLAZER LS/	1GNDT13WX12183709

### 4. Coverages, Limits of Liability and Premiums

Insurance is provided only where a premium is shown for the coverage.

	1	2
	79 FORD F150	01 CHEVR BLAZER LS/
A - Bodily Injury \$50,000 each person \$100,000 each accident	\$ 241	\$ 241
B - Property Damage \$50,000 each accident	185	185
D1 - Uninsured Motorists Bodily Injury \$50,000 each person \$100,000 each accident See Endorsement A01043	172	172
E - Collision Actual Cash Value less \$500 deductible	-	477
F - Comprehensive (Other than Collision) Actual Cash Value less \$250 deductible	-	174

Continued on next page

Page 1 of 3

**4. Coverages, Limits of Liability and Premiums (continued)**

	79 FORD F150	01 CHEVR BLAZER LS/
G - Extended Transportation Expense: \$30 per day/\$900 maximum See Endorsement A00391	-	9

Subtotals for your vehicles:

\$598

\$1,258

Total Premium for This Policy: \$1,856

**5. Information Used to Rate Your Policy****Discounts Included in Your Premium**

Passive Restraint

01 CHEVR  
BLAZER LS/

Multiple Cars

**Surcharges Included in Your Premium****Accidents and/or Traffic Violations Listed Below:**

Accidents

12/03/02  
SANDI

Traffic Violations

01/30/04  
SANDI**Drivers**Date of  
Birth

Sex

Marital  
StatusRONALD J  
SANDI07-04-65  
09-22-66Male  
FemaleMarried  
Married**Vehicles**Use of  
VehicleLocation  
of Vehicle79 FORD F150  
01 CHEVR BLAZER LS/Commute  
CommutePHENIX CITY AL  
PHENIX CITY AL

It is important that the above information is correct to ensure that your policy is properly rated. If there are errors or changes to this information, please notify your Travelers representative immediately.





Named Insured: RONALD J & SANDI PHILLIPS  
Policy Number: 976974840 102 1  
Policy Period: September 10, 2004 to September 10, 2005  
Issued On: October 11, 2004

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**6. Other Information**

**Loss Payees**

01 CHEVR BLAZER LS/ VIN # 1GNDT13WX12183709	AMERICAN GENERAL 323 AIRPORT RD STE D AUBURN, AL 368308940
--	--

**Your Insurer**      Travelers Commercial Insurance Company  
One of The Travelers Insurance Companies  
One Tower Square, Hartford, CT 06183

**Policy Endorsements**

A01043 Uninsured Motorists - Alabama  
A01051 Amendment of Policy Provisions - Alabama  
A00391 Personal Auto Policy Coverage Enhancement Endorsement

**Policy Edition 6      Policy Form 101      Issued on 10/11/04**

Thank you for insuring with The Travelers. We appreciate your business. If you have any questions about your insurance, please contact your Travelers representative.

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**FOR YOUR INFORMATION**

Children & air bags. . . it's as easy as 1 - 2 - 3

1. Never put a child seat (those used with infants) in the front seat of a car with air bags.
2. Make sure all children are buckled up no matter where they sit. Unbuckled children can be hurt or killed by an air bag.
3. The rear seat (those with seat belts) is the safest place for children of any age to ride.